

EXHIBIT 7

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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BARRY LINTON,)
Plaintiff,)
) C.A.No. 04-11362-RWZ
vs.)
)
NEW YORK LIFE INSURANCE AND)
ANNUITY CORP.,)
Defendant.)

DEPOSITION of NEW YORK LIFE INSURANCE AND ANNUITY COMPANY by JOHN HESS, JR., called as a witness by and on behalf of the Plaintiff, pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure Rule 30(b)(6), before Margaret M. Hoey, Certified Shorthand Reporter No. 114693 and Notary Public within and for the Commonwealth of Massachusetts, at the offices of Looney & Grossman, LLP, 101 Arch Street, Boston, Massachusetts, on Tuesday, November 29, 2005, commencing at 9:00 a.m.

1 twelve in a given policy year. So on the
2 thirteenth they could charge \$30 for a transfer
3 between investment divisions, right?

4 A. We reserve the right to, yes.

5 Q. Have they ever done that?

6 A. No.

7 Q. Is that the only right that's reserved for
8 transfers between investment divisions?

9 A. No.

10 Q. What are the other rights reserved under the
11 policy?

12 A. I would point to the section that says 5.12. "If
13 you want to make a transfer, you must tell us in
14 a notice you sign which gives us the facts that
15 we need."

16 Q. Typically what is that?

17 A. Typically that would be a service form that would
18 be filled out by the policyowner giving some
19 information that he wants or she wants to happen.

20 Q. A service form. Who provides that to the
21 policyowner?

22 A. Either one or two places. Either the service
23 area, the Variable Products Service Center, or
24 the registered rep. I believe now it's on-line

1 as well.

2 Q. So you could do it on-line as well?

3 A. I believe now currently you can.

4 Q. What kind of information is typically on the
5 service center?

6 MR. JONES: Objection. I think he said
7 the form was available on-line. I want to be
8 sure that the testimony is correct.

9 Q. What kind of information is on that form?

10 A. I don't know specifically the details of it
11 because I don't have it in front of me, but you
12 would have to tell us the policy number and the
13 to and the from, which funds are you taking it
14 from and putting it into. So the actual transfer
15 amounts that would move and the dollar amount,
16 what percentage.

17 Q. So if a policyowner filled out that form, then he
18 was able to transfer -- have unlimited transfers
19 between investment divisions?

20 A. Yes.

21 Q. Are there any other rights reserved to New York
22 Life regarding transfers between investment
23 divisions under the policy?

24 A. I don't believe so under the policy contract

1 itself.

2 Q. Is there any other document that would control
3 transfers between investment divisions?

4 MR. KARMEN: What was the last
5 question?

6 (Question read.)

7 MR. JONES: Objection. What do you
8 mean control?

9 MR. HENDERSON: I was going off the
10 response that he replied to the policy and he
11 said not under the policy. I'm curious if
12 there's other documents that would limit
13 transfers -- maybe not control but would limit
14 transfers if it's not the policy.

15 A. Not limit transfers, no. There wouldn't be any
16 other form that would limit transfers.

17 Q. How about any other document?

18 A. Well, the prospectus outlines on a yearly basis
19 what activities go on with transfers.

20 Q. But isn't the controlling document the policy?

21 MR. JONES: Objection.

22 Q. What governs the policy, this policy in
23 particular?

24 A. The policy is just -- I'll specifically tell you.

1 Q. So your testimony is the only way he could make a
2 transfer is by a signed piece of paper under the
3 policy?

4 A. In this contract that's what it says, yes.

5 Q. So under this contract Mr. Linton could not make
6 a transfer by telephone?

7 A. That's where I would consider those
8 administrative adjustments that we have made
9 through the years to offer different ways and
10 based on what's out there for a client to make
11 transfers if he wanted to we allowed it.

12 Q. So under the policy he could not make a transfer
13 by telephone?

14 A. Under this contract we don't mention telephone,
15 correct, but he can make a transfers if he
16 submits the form here, the signed form. So
17 that's an option that's always there for the
18 policyowner.

19 Q. All right. Concerning market timing, let me try
20 to rephrase this question a little bit. In 2003
21 did anyone at New York Life that you are aware of
22 come to the opinion that market timing was
23 illegal?

24 A. Was illegal?

1 MR. JONES: Meaning is that correct, is
2 that what the letter says?

3 Q. Is that correct what that sentence says?

4 A. Yes.

5 Q. What is your understanding of the PIN number in
6 this context?

7 A. The PIN number was the telephone authorization
8 process. And now it's a virtual service center.
9 So you fill out a form and you say I would like
10 to have the ability to access my activities on my
11 policy this way, and we provide you a PIN so it
12 gets you into the automatic systems that do the
13 processing. So it is a way of identifying.

14 Q. Is that PIN number form -- what information is on
15 that form, do you know?

16 A. I don't recall off the top of my head, no. When
17 I see it I know that's the authorization form
18 that you sign and say, yes, I would like access.

19 Q. So it has to be filled out by the policyholder?

20 A. And signed, correct.

21 Q. The next sentence says, "I will be forwarding
22 copies of this letter over to you as well as a
23 copy is being sent to DMS." Can you tell me what
24 DMS is?

1 A. I don't know what DMS stands for. It's a process
2 of that copies this material into the -- it's not
3 paper anymore.

4 Q. What do you mean? The form is not paper anymore?

5 A. The letters themselves aren't kept in paper
6 format. They are copied.

7 MR. JONES: Image.

8 A. Exactly. It's an imaging system.

9 Q. So the original copy that's signed by the
10 policyholder is then scanned in?

11 A. Exactly.

12 MR. JONES: Objection. You are talking
13 now about the warning letter?

14 MR. HENDERSON: Yes.

15 Q. Let me ask this question. Is the form that's
16 filled out and signed by the policyholder for the
17 PIN number, is that also scanned in?

18 A. I believe so, yes.

19 Q. Who is Michael Kern?

20 A. Michael Kern is an assistant. Not my assistant
21 but an assistant in the Life Department, in the
22 product development area of the Life Department.

23 Q. And he's familiar with the VUL policies?

24 A. Correct.